

SERVICE DATE – AUGUST 14, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 664 (Sub-No. 2)

PETITION OF THE WESTERN COAL TRAFFIC LEAGUE TO INSTITUTE A
RULEMAKING PROCEEDING TO ABOLISH THE USE OF THE MULTI-STAGE
DISCOUNTED CASH FLOW MODEL IN DETERMINING THE RAILROAD INDUSTRY'S
COST OF EQUITY CAPITAL

Digest:¹ This decision denies the second petition of Western Coal Traffic League (WCTL) to reconsider a Board decision served on October 31, 2016, denying WCTL's request to abolish use of the multi-stage discounted cash flow model in the agency's estimation of the railroad industry's cost of capital.

Decided: August 10, 2017

On August 27, 2013, the Western Coal Traffic League (WCTL) filed a petition requesting that the Board institute a rulemaking to abolish the use of the multi-stage discounted cash flow model (MSDCF) in determining the railroad industry's cost of equity capital, and instead rely exclusively on the Capital Asset Pricing Model (CAPM). (WCTL Pet. 1, Aug. 27, 2013.) The Board received comments and held a hearing on the petition.

In a decision served on October 31, 2016 (October 31 Decision), the Board declined to issue a Notice of Proposed Rulemaking and closed this proceeding. The Board concluded that the cost-of-equity component of its annual cost-of-capital estimate for the railroad industry should be calculated, as it has been since 2009, by using a simple average of the estimates produced by CAPM and the MSDCF model.

WCTL filed a petition for reconsideration on November 21, 2016, and the Association of American Railroads (AAR) filed a reply in opposition on December 12, 2016. The Board denied WCTL's petition for reconsideration in a decision served on April 28, 2017 (April 28 Decision).

WCTL filed a second petition for reconsideration on May 11, 2017, and AAR filed a reply in opposition on May 31, 2017.²

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On June 14, 2017, WCTL submitted a motion for leave and response to AAR's May 31 reply. AAR submitted a letter on June 19, 2017, requesting that the Board reject WCTL's reply
(continued...)

DISCUSSION AND CONCLUSIONS

A party may seek reconsideration of a Board decision by submitting a timely petition that (1) presents new evidence or substantially changed circumstances that would materially affect the case, or (2) demonstrates material error in the prior decision. 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.3. The Board generally does not consider new issues raised for the first time on reconsideration where those issues could have and should have been presented in the earlier stages of the proceeding. Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1), slip op. at 12-13 (STB served Mar. 19, 2008); Tex. Mun. Power Agency v. Burlington N. & Santa Fe Ry., 7 S.T.B. 803, 804-05 (2004).

In its second petition for reconsideration (at 2-3), WCTL continues to reiterate its argument that the Board's cost-of-equity calculation is distorted by stock buybacks, an argument the Board has already addressed. See October 31 Decision at 14; April 28 Decision at 9; see also AAR Reply, May 31, 2017. As the Board previously explained, WCTL did not provide evidence to support its conclusion that the analyst forecasts used in the MSDCF are biased upward by potential stock buybacks. October 31 Decision at 14 (“[T]he Board finds that there is a lack of evidence in the record supporting the position that the analyst growth rates are distorted by stock buybacks.”); April 28 Decision at 9 (“The Board found . . . that WCTL had not provided adequate support for its claim that buybacks caused a distortion.”). The Board also explained why it was not reasonable to assume such a distortion in the absence of evidence. See October 31 Decision at 14. By merely recasting its theoretical arguments, WCTL has not demonstrated material error or provided new evidence that would materially affect the outcome of the case.

WCTL's second petition for reconsideration also raises a new stock buyback argument purportedly based on decisions issued in 1984 and 1992 by the Board's predecessor, the Interstate Commerce Commission. (See WCTL Second Pet. for Reconsideration 3-5.) This argument is waived, because WCTL could have introduced it earlier but failed to do so until its second petition for reconsideration. See Simplified Standards, slip op. at 12-13; Tex. Mun. Power Agency, 7 S.T.B. at 804.

For the reasons stated above and in the April 28 Decision, WCTL has not shown material error in the October 31 Decision. Accordingly, WCTL's second petition for reconsideration will be denied.

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to reply. WCTL's reply to reply, which repeats its prior arguments, does not provide information that is necessary to develop a more complete record, nor does WCTL attempt to show good cause for waiving the Board's prohibition on replies to replies. See 49 C.F.R. § 1104.13(c). Accordingly, WCTL's reply to reply will be rejected.

It is ordered:

1. WCTL's second petition for reconsideration is denied.
2. WCTL's June 14, 2017 reply to reply is rejected.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Elliott, and Miller.